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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

J. GRAY O'BRIEN
917 Venezia
Venice, CA 90291

Physical Therapy License No. PT 25009

Respondent.

Case No. 1D 2003 63544

**FIRST AMENDED
ACCUSATION**

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.
2. On or about February 22, 2000, the Physical Therapy Board of California issued Physical Therapy License Number PT 25009 to J. Gray O'Brien (Respondent). The Physical Therapy License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2007, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 4. Section 2660 of the Code states:

4 “The board may, after the conduct of appropriate proceedings under the
5 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
6 impose probationary conditions upon any license, certificate, or approval issued under
7 this chapter for unprofessional conduct that includes, but is not limited to, one or any
8 combination of the following causes:

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10 “(h) Gross negligence in his or her practice as a physical therapist or
11 physical therapy assistant.

12 “(i) Conviction of a violation of any of the provisions of this chapter or of
13 the State Medical Practice Act, or violating, or attempting to violate, directly or
14 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
15 provision or term of this chapter or of the State Medical Practice Act.

16 “(j) The aiding or abetting of any person to violate this chapter or any
17 regulations duly adopted under this chapter.

18 (k) The aiding or abetting of any person to engage in the unlawful practice
19 of physical therapy.

20 (l) The commission of any fraudulent, dishonest, or corrupt act which is
21 substantially related to the qualifications, functions, or duties of a physical
22 therapist or physical therapy assistant.”

23 5. Section 2630 of the Code states, in pertinent part:

24 “A physical therapist . . . may utilize the services of one aide engaged in patient-
25 related tasks to assist the physical therapist in his or her practice of physical therapy. . . .
26 The aide shall at all times be under the orders, directions, and immediate supervision of
27 the physical therapist. . . . The physical therapist shall provide continuous and immediate
28 supervision of the aide. The physical therapist shall be in the same facility as, and in

1 proximity to, the location where the aide is performing patient-related tasks, and shall be
2 readily available at all times to provide advice or instruction to the aide. When patient-
3 related tasks are provided to a patient by an aide, the supervising physical therapist shall,
4 at some point during the treatment day, provide direct service to the patient as treatment
5 for the patient's condition, or to further evaluate and monitor the patient's progress, and
6 shall correspondingly document the patient's record."

7 6. Section 2620.7 of the Code states:

8 "A physical therapist shall document his or her evaluation, goals, treatment plan,
9 and summary of treatment in the patient record. Patient records shall be maintained for a
10 period of no less than seven years following the discharge of the patient, except that the
11 records of unemancipated minors shall be maintained at least one year after the minor has
12 reached the age of 18 years, and not in any case less than seven years."

13 7. California Code of Regulations, title 16, section 1399, states:

14 "A physical therapy aide is an unlicensed person who assists a physical therapist
15 and may be utilized by a physical therapist in his or her practice by performing nonpatient
16 related tasks, or by performing patient related tasks.

17 "(a) As used in these regulations:

18 "(1) A "patient related task" means a physical therapy service rendered directly to
19 the patient by an aide, excluding nonpatient related tasks as defined below.

20 "(2) A "nonpatient related task" means a task related to observation of the patient,
21 transport of patients, physical support only during gait or transfer training, housekeeping
22 duties, clerical duties and similar functions.

23 "(b) "Under the orders, direction and immediate supervision" means:

24 "(1) Prior to the initiation of care, the physical therapist shall evaluate every
25 patient prior to the performance of any patient related tasks by the aide. The evaluation
26 shall be documented in the patient's record.

27 "(2) The physical therapist shall formulate and record in the patient's record a
28 treatment program based upon the evaluation and any other information available to the

1 physical therapist, and shall determine those patient related tasks which may be assigned
2 to an aide. The patient's record shall reflect those patient related tasks that were rendered
3 by the aide, including the signature of the aide who performed those tasks.

4 “(3) The physical therapist shall assign only those patient related tasks that can be
5 safely and effectively performed by the aide. The supervising physical therapist shall be
6 responsible at all times for the conduct of the aide while he or she is on duty.

7 “(4) The physical therapist shall provide continuous and immediate supervision of
8 the aide. The physical therapist shall be in the same facility as and in immediate
9 proximity to the location where the aide is performing patient related tasks, and shall be
10 readily available at all times to provide advice or instruction to the aide. When patient
11 related tasks are provided a patient by an aide the supervising physical therapist shall at
12 some point during the treatment day provide direct service to the patient as treatment for
13 the patient's condition or to further evaluate and monitor the patient's progress, and so
14 document in the patient's record.

15 “(5) The physical therapist shall perform periodic re-evaluation of the patient as
16 necessary and make adjustments in the patient's treatment program. The re-evaluation
17 shall be documented in the patient's record.

18 “(6) The supervising physical therapist shall countersign with their first initial and
19 last name, and date all entries in the patient's record, on the same day as patient related
20 tasks were provided by the aide.”

21 8. Section 725 of the Code states:

22 “Repeated acts of clearly excessive prescribing or administering of drugs or
23 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts
24 of clearly excessive use of diagnostic or treatment facilities as determined by the standard
25 of the community of licensees is unprofessional conduct for a physician and surgeon,
26 dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.

27 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the
28 California Intractable Pain Treatment Act shall be subject to disciplinary action for

1 lawfully prescribing or administering controlled substances in the course of treatment of a
2 person for intractable pain.”

3 9. Section 2661.5 of the Code states:

4 “(a) In any order issued in resolution of a disciplinary proceeding before
5 the board, the board may request the administrative law judge to direct any
6 licensee found guilty of unprofessional conduct to pay to the board a sum not to
7 exceed the actual and reasonable costs of the investigation and prosecution of the
8 case.

9 “(b) The costs to be assessed shall be fixed by the administrative law
10 judge and shall not in any event be increased by the board. When the board does
11 not adopt a proposed decision and remands the case to an administrative law
12 judge, the administrative law judge shall not increase the amount of the assessed
13 costs specified in the proposed decision.

14 “(c) When the payment directed in an order for payment of costs is not
15 made by the licensee, the board may enforce the order of payment by bringing an
16 action in any appropriate court. This right of enforcement shall be in addition to
17 any other rights the board may have as to any licensee directed to pay costs.

18 “(d) In any judicial action for the recovery of costs, proof of the board's
19 decision shall be conclusive proof of the validity of the order of payment and the
20 terms for payment.

21 “(e) (1) Except as provided in paragraph (2), the board shall not renew or
22 reinstate the license or approval of any person who has failed to pay all of the
23 costs ordered under this section.

24 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
25 conditionally renew or reinstate for a maximum of one year the license or
26 approval of any person who demonstrates financial hardship and who enters into a
27 formal agreement with the board to reimburse the board within that one year
28 period for those unpaid costs.

1 “(f) All costs recovered under this section shall be deposited in the
2 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
3 costs are actually recovered or the previous fiscal year, as the board may direct.”

4 **CAUSE FOR DISCIPLINE**

5 (Documentation of Physical Therapy)

6 10. Respondent is subject to disciplinary action under section 2620.7, in
7 conjunction with California Code of Regulations Title 16, section 1399, in that he failed to
8 properly supervise physical therapy aides by ensuring proper documentation of treatment. The
9 circumstances are as follows:

10 A. With respect to K.A.¹, respondent's patient was treated by a physical therapy
11 aide on May 7, 14, 17, June 6, 12, 20, July 2, 18, 23, August 7, 20, 27, September 4, 6,
12 13, 17, 24 and 27, 2002, and respondent (1) failed to countersign the aide's entries in the
13 chart and (2) failed to ensure that the aide properly documented the patient's chart..

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Physical Therapy Board of California issue a
17 decision:

18 1. Revoking or suspending Physical Therapy License Number PT 25009,
19 issued to J. Gray O'Brien;

20 2. Ordering J. Gray O'Brien to pay the Physical Therapy Board of California
21 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
22 Professions Code section 2661.3;

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28 1. The patient is referred to herein by initials to protect the patient's privacy. The full
name of the patient will be disclosed to respondent upon a timely request for discovery.

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3. Taking such other and further action as deemed necessary and proper.

DATED: March 13, 2007

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

O'Brien Amended Accusation.wpd